

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Franklin W. Olin College of Engineering

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D.T.E. 01-95

**REPLY BRIEF OF
WELLESLEY MUNICIPAL LIGHT PLANT**

On May 6, 2002 the Wellesley Municipal Light Plant (“WMLP”) and other parties in this proceeding filed Initial Briefs regarding the Petition of Franklin W. Olin College of Engineering (“Olin College”). In its Petition Olin College seeks approval from the Department of Telecommunications and Energy (the “Department” or the “DTE”) for WMLP to provide electric service to the property for which Olin College seeks electric service in this proceeding. The Petition was opposed by Boston Edison Company d/b/a NSTAR Electric (“Boston Edison” or the “Company”).¹ Pursuant to the procedural schedule established by the Hearing Officer in this proceeding, WMLP hereby files its Reply Brief.

In its Initial Brief, (“WMLP Br.”) WMLP set forth its position on the relevant legal and factual issues before the Department in this proceeding and urged the Department to approve Olin College’s Petition. WMLP submits that there is nothing in Boston Edison’s Initial Brief that warrants any change in WMLP’s basic position. In this Reply Brief, WMLP will not attempt to address each of the issues raised by Boston Edison in its Initial Brief; instead WMLP will focus on a few key matters, which WMLP believes warrant additional clarification or explanation. As is the case with any reply brief,

¹ In its Initial Brief WMLP referred to Boston Edison as “NSTAR.” To avoid confusion and for consistency with the designations used by Boston Edison and Olin College in their Initial Briefs, WMLP will refer to NSTAR as “Boston Edison” or “BECO” in this Reply Brief.

WMLP's failure to address any specific issue raised by Boston Edison in its Initial Brief should not be construed as WMLP's agreement with Boston Edison's position with respect to that particular issue.

For the reasons set forth in its Initial Brief and in this Reply Brief, WMLP respectfully requests that the Department determine that the property for which Olin College seeks electric service in this proceeding is located within WMLP's exclusive service territory. In the alternative, WMLP requests that the Department determine that Olin College has a right to choose its electric service provider.

ARGUMENT

As is evident from the positions set forth by Boston Edison and WMLP in their Initial Briefs, there are several matters on which they agree. For example, Boston Edison and WMLP apparently agree that the decision faced by the Department is relatively simple and straightforward. Boston Edison's Initial Brief ("BE Br.") at 1 and WMLP Br. at 1. The issue that the Department needs to decide is whether the parcel of land for which Olin College is seeking electric service is part of WMLP's or Boston Edison's electric service territory. WMLP and Boston Edison also contend that a decision in its favor would be consistent with and is mandated by both the plain language of G.L. c. 164, §1B(a) and the Department's recent decision in Peabody Municipal Light Plant ("Peabody"), D.T.E. 98-122 (2002).

Given the degree of agreement on these key matters, one would think that WMLP and Boston Edison would reach similar, if not identical, conclusions as to the appropriate outcome of this proceeding. However, as will be explained in this Reply Brief, this is not the case, due in large part to the fact that Boston Edison has offered up an interpretation of G.L. c. 164, §1B(a) and the Department's Peabody decision that ignores the facts that are on the record before the Department, that

is unquestionably inconsistent with the clear language and intent of G.L. c. 164, §1B(a) and that stretches the clear language and intent of Peabody beyond rationality.

1. The Parcel for which Olin College is Seeking Electric Service is Lot 2.

There can be little doubt that the property for which Olin College is seeking electric service is Lot 2, as shown on Exh. BE-1-1A. Babson College deeded Lot 2 to Olin College in March 2000 as part of a larger land sale. Exh. BE-1-4, Attachment. Contrary to Boston Edison's attempt to divert the Department's focus to other parcels of land in Needham, Olin College is not seeking electric service to the other parcels that make up the property, of which Lot 2 was a part, which were deeded to it by Babson College in 2000. Olin College is seeking electric service for only the new buildings and facilities that are being constructed entirely within and on what is designated as Lot 2. Exh. BE-1-1A; Olin Petition, ¶4; Tr. 681.²

This is an important difference between the positions of Boston Edison and WMLP regarding the authority to serve the new Olin College buildings on Lot 2. Because it is only by extending the focus of this case to portions of the Olin College property that are not the subject of Olin College's Petition, i.e. existing and much smaller Lot 5 facilities which are presently and will continue to be served by Boston Edison, Tr. 658, is it even possible for Boston Edison to make any claim that its interpretation of the scope of G.L. c. 164, §1B(a) is correct. However, Boston Edison's attempt to skew the outcome of this proceeding by having the Department focus on a set of circumstances that is not even before the Department is misplaced and should be seen as nothing more than a last ditch attempt by Boston Edison

² Contrary to the "red herring" that Boston Edison alleges on page 25 of its Initial Brief, WMLP is interested in serving only Lot 2, since this is the property that WMLP has historically served.

to “cherry pick” an important customer by expropriating a portion of WMLP’s historic and exclusive service territory.³

2. G.L. c. 164 §1B(a) Mandates a Finding that Lot 2 is in WMLP’s Exclusive Service Territory.

First and foremost, it goes without saying that prior to the enactment of G.L. c. 164, §1B electric utilities in Massachusetts did not have exclusive franchises or service territories. See, WMLP Br. at 10-15. Instead, what they had was an amalgamation of ancient contracts, street crossing permits and historic, and frequently undocumented, permissions to serve particular areas of various communities. Each utility had some but usually not all of these “rights” and permissions for each community for which it provided service. However, at no time prior to the enactment of the Electric Industry Restructuring Act in 1997 did any utility claim to have an “exclusive” and, according to Boston Edison’s interpretation of history, “eternal” right to serve each and every parcel no matter where that parcel of property is in a particular community. If such rights existed, either G.L. c. 164 §1B(a) would not be needed, as every parcel of property in the Commonwealth already would be in an electric utility’s exclusive service territory, or the language of G. L. c. 164, §1B(a) would be substantially different. The fact is that no such exclusive service territories existed. What utilities had was the right to serve particular areas of communities, which naturally grew from time to time as the community grew but which did not cover every parcel in the community.⁴

³ WMLP and its customers have the right to receive the benefits of service to the property which WMLP has historically served and which is within WMLP’s historic franchised service territory. As noted in WMLP’s Initial Brief, Boston Edison has acknowledged that it has never served Lot 2, while WMLP has served it continuously for over 30 years. WMLP Br. at 8; Tr. 683; Exhs. WMLP-2-6 and 2-10.

⁴ If such exclusive service territories existed, which they did not, there would not have been the plethora of border customer cases prior to 1997. See, e.g., Suffolk Downs, Ecological Fibers, Wellesley Board of Public Works.

As noted in WMLP's Initial Brief, this is exactly what has occurred in connection with Boston Edison's service in the Town of Needham. WMLP Br. at 10-15. Boston Edison has a series of nearly century old agreements that provide it with a very limited authority to serve specific portions of Needham.⁵ None of these agreements pertains to the Olin College property. None of these agreements establishes an exclusive right for Boston Edison to serve Needham. Moreover, the reality is that Boston Edison never had and does not now have an exclusive right to serve all of Needham. WMLP has been providing service to portions of Needham for over 80 years.⁶ Boston Edison admits that WMLP has served Needham for years. BE Br. At 9, 27. As the Department set forth in Wellesley Board of Public Works ("WBPW"), D.P.U. 86-45/D.P.U. 86-144 (1987), WMLP has "extended electric service beyond its territorial boundaries [in Needham] for some 70 years." Id. at 8. The Department also ruled that because WMLP "has historically served customers along Cartwright Road, it should be required to meet its obligations to serve all residents along that street [Cartwright Road in Needham] without discrimination." Id. at 20. The recognition that WMLP has an "obligation to serve" these customers is a traditional obligation of an electric utility to customers in its service territory. Clearly, at least this part of Needham was viewed as WMLP's service territory and not Boston Edison's. Hence, Boston Edison cannot claim an exclusive right to serve all of Needham.

One final point on WMLP's service on Cartwright Road needs to be addressed. In its Initial Brief at 30, Boston Edison argues that it consented to WMLP's service to the homes on Cartwright Road and therefore that service cannot be used to demonstrate the lack of

⁵ Even a cursory reading of these agreements clearly show that Boston Edison, in its Initial Brief at pages 15 and 16, has overstated the breadth and extent of these agreements since they cover only very limited service in very limited areas of Needham.

⁶ Contrary to what Boston Edison claims at page 15 of its Initial Brief, Boston Edison is not the lone electric service provider in Needham.

exclusivity of Boston Edison's service territory in Needham. Boston Edison misstates the facts.⁷

WMLP did not want to serve the customers on Cartwright Road, and in fact as far as WMLP was concerned, WMLP did not believe that it had any obligation to serve these customers because they were in Needham. Tr. 206-207; BE Br. at 17. The Department did not agree with WMLP's position and WMLP was ordered to provide electric service. In fact, the position that WMLP is taking in this case – that WMLP as the historical service provider to Lot 2 WMLP has a franchise right and obligation to serve Lot 2 – is entirely consistent with the Department's decision in WBPW, while Boston Edison's position is totally at odds with this Department decision. It was not a question of Boston Edison granting permission or consenting to WMLP's service to these customers. That consent was never sought by WMLP. More importantly, the Department did not treat this as a matter requiring Boston Edison's consent. The Department stated that WMLP and not Boston Edison had an "obligation to serve" these customers. As Boston Edison knows, electric utilities have an obligation to serve all customers located in their service territories. The Department determined that due to the historic nature of WMLP's electric service to Cartwright Road in Needham, that portion of Needham was part of WMLP's service territory. It is evident that Department did not deem that Boston Edison had an exclusive right to serve all of Needham, otherwise it would not have declared that WMLP had an obligation to serve in Needham.

⁷ Contrary to Boston Edison's position in its Initial Brief (BE Br at 29) Boston Edison could have served the customers on Cartwright Road in Needham. WBPW, *supra* at 4, 10; BE Br at 31. In WBPW Boston Edison argues that its cost of connecting these Needham customers was too high and that WMLP should be required to serve them. This is similar to the situation in this case where WMLP's interconnection costs to Olin College are much lower than Boston Edison's. The difference in this case, however, is only that Olin College has a larger load than did the customers on Cartwright Road, which of course will result in more revenue to Boston Edison. (BE Br. at 11, 30). The revenue that a utility can make on a customer cannot be the basis for the Department's decision as to the scope of that utility's service territory.

Since there were no exclusive service territories in Massachusetts in 1997, the Legislature enacted G.L. c. 164, §1B(a), which states in relevant part: “The department shall define service territories for each distribution company by March 1, 1998, based on the *service territories actually served on July 1, 1997, and following to the extent possible municipal boundaries*. (emphasis added). There are three key elements of this statute that must be considered in light of the facts of this case. These are: (a) “service territories,” (b) “actually served on July 1, 1997,” and (c) “following to the extent possible municipal boundaries.” As will be shown below and as was discussed in WMLP Br. at 4-21, each of these elements when applied to the facts before the Department mandates a decision in favor of Olin College’s Petition to have WMLP serve Lot 2.

a. “Service Territories” are Defined by Property not by Customers.

The language of §1B(a) is absolutely clear. The term “service territories” contemplates a physical parcel of property. It does not constitute a particular customer that may be on that parcel, as customers are transitory in nature and land is not. For example, in this case Boston Edison has claimed that the entire parcel known as Suffolk Downs, which straddles the municipal boundaries of Boston and Revere⁸, is part of its service territory. Exh. WMLP-1-1.

WMLP presumes that, if the owners of Suffolk Downs chose to subdivide that parcel of land into two separate lots, one in Boston and one in Revere, and if the new owner of the lot in Revere erected a building on that property, Boston Edison would claim that the newly constructed building on the parcel in Revere is still part of its service territory, as it was providing service to the Suffolk Downs property in

⁸ Historically, Boston Edison provided electric service within the City of Boston and Massachusetts Electric Company provided service within the City of Revere.

1997, even if prior to July 1, 1997 there was no electric service on the specific portion of the property on which the new customer is locating its new building.

WMLP believes that this result is entirely consistent with and mandated by the clear language of §1B. In fact, this is the only result that is possible under that statute. Making a determination of service territory based not on the property in question but instead on the specific customer, size of the load, or use of the property would result in a situation which would have service territories switching between electric utilities based on who owns the property at a particular time and the load that the customer had at that particular time. Clearly, the Legislature did not intend that service territories would become like ping pong balls sent back and forth between electric utilities depending on changes in property ownership, load size, and use. If electric utility service territories were based on customers load size and type of load or use this could well set up a situation of “creative conveyancing” that concerned the Department in Peabody. Yet, as discussed below, this is apparently what Boston Edison is advocating in this proceeding.⁹

The circumstances before the Department in this proceeding are identical to those set out above. Prior to July 1, 1997, Lot 2, on which Olin College is building its new campus and which is the property that is the subject of this proceeding, was once part of a larger parcel owned by Babson College. Prior to, on and immediately after July 1, 1997 the larger parcel straddled the municipal boundaries of Needham and Wellesley and electric service was provided to this property by WMLP.

⁹ At pages 9, 11, 27 and 30 of its Initial Brief, Boston Edison implies that the size and type of load that WMLP actually served on Lot 2 as of July 1, 1997 needs to be considered in reaching a decision under G.L. c. 164, §1B(a), on WMLP’s right to continue to serve Lot 2. As shown in WMLP’s Reply Brief, this issue is irrelevant under §1B(a). Section 1B (a) does not include a single word from which any inference may be made that the Legislature thought that the size or type of load served by a particular utility on July 1, 1997 was in any way relevant to the inquiry the Department must undertake under this statute. The Legislature clearly and unambiguously set forth that what is relevant is what property the electric utility served on July 1, 1997.

Under G.L. c. 164, §1B(a) the Department has to look at how the property was configured on July 1, 1997 and which electric utility served it. On July 1, 1997 this property was in both Wellesley and Needham and WMLP served it.

After July 1, 1997, Babson College continued to own this property including what is now Lot 2, and WMLP continued to supply it, including what is now Lot 2, with electricity. In March 2000, Babson College sold some of this large parcel of land to Olin College. The property sold to Olin College included what is known as Lot 2. However, the sale of property to Olin College in no way diminished the fact that WMLP actually served this property on and after July 1, 1997. In selling its interests in this property to Olin College, Babson College did not and more important by could not sell WMLP's right to serve this property with electricity. Babson College did not have any legal right to sell WMLP's service territory. In fact such a sale would be a type of "creative conveyance" to take this property out of WMLP's service territory. This result is not allowed under G.L. c. 164, §1B(a) or the Department's decision in Peabody. As will be discussed below, it is precisely this issue that the Department addressed in Peabody, i.e. the authority of private parties to engage in a conveyance to deprive an electric utility of its right to serve a particular parcel of property. In the instant case it is clear that the property in question, Lot 2, was and is part of WMLP's service territory and that that status is not in any way dependent on who owns the parcel at any particular time.

b. "Actually Served on July 1, 1997"

As discussed at length in WMLP's Initial Brief (WMLP Br. at 6-9), there is no question that the "service territory," (the property in question in this proceeding, Lot 2), actually was being served by WMLP on July 1, 1997. Exhs. WMLP-1, pp. 2, 3; BE-8-8; Tr. 678-683. Boston Edison even

admits that WMLP was serving Lot 2. BE Br at 9, 27. By enacting G.L. c. 164 §1B(a) the Legislature drew a line in the sand, so to speak, and said that to the extent there was a dispute as to which service territory a particular parcel belonged, the Department had to consider the circumstances of the parcel as of July 1, 1997. How the property in question here was actually served on July 1, 1997, is the principal factor that the Department must consider in resolving this service territory dispute.

The record evidence in this proceeding is clear and unequivocal. As of July 1, 1997, WMLP was actually serving what is now known as Lot 2. Boston Edison argues that because this service consisted of outdoor lighting for parking lots and street lights on Map Hill Road and that it was removed prior to the sale of this property to Olin College, BE Br. at 27, that WMLP's right to serve this property now is somehow extinguished. Boston Edison's argument must fail as it is in no way supported by a clear, unambiguous reading of §1B(a). In fact, Boston Edison's argument is wholly irrelevant to what the Department must consider. It is not important or relevant to the Department's determination that the type of service being provided on July 1, 1997 is different from the type of service required today. As noted above, customers that occupy a particular parcel and their individual needs change from time to time, which is why service territories are based on property not customers. There is nothing in §1B that requires customer and the type of service remain constant. In fact there is no reference to customers or usage in §1B. Also, it is not relevant to the Department's determination that sometime after July 1, 1997 and before March 2000 Babson College removed the outdoor lighting.¹⁰

¹⁰ Boston Edison tries, in vain, to develop an argument that the removal of the parking lot and streetlights prior to the sale of the property to Olin College somehow extinguished WMLP's legal rights to serve this property. This is another attempt to divert the Department's attention from this central issue in this proceeding, i.e., which utility (Boston Edison or WMLP) actually served Lot 2 as of July 1, 1997. In its haste to make this argument, Boston Edison neglects to state that these lights were removed because Olin College was constructing its new building on the exact location of the lights and that WMLP's serve to Olin College for construction of these buildings was provided in the exact same manner as was WMLP's service to these lights.

Again, the statute is concerned with only one factor, was an electric utility “actually serving” the property “on July 1, 1997.” Since the record in this proceeding is absolutely clear that on July 1, 1997 WMLP “actually served” Lot 2 and that at no time has Boston Edison ever served Lot 2, the Department’s application of the clear and unequivocal bright line test established by the Legislature in §1B(a) can lead to only one conclusion, WMLP actually served Lot 2 on July 1, 1997 and Lot 2 is part of WMLP’s service territory.

c. “Following to the Extent Possible Municipal Boundaries”

Since Boston Edison cannot muster any proof that it “actually served” Lot 2 on July 1, 1997, Boston Edison argues that the phrase “following to the extent possible municipal boundaries” somehow is the key, overarching criteria, which overrides all other factors. BE Br. at 38. This is nothing more than a repetition of the “strained and constraining” argument put forth by Massachusetts Electric and rejected by the Department in Peabody, supra, at 7. The Department’s understanding of the meaning of this provision in §1B(a) is correct. In Peabody, supra, at 6, the Department stated: “The Legislative mandate to the Department was . . . couched in terms that accorded the agency a measure of discretion in resolving disputes where the boundaries between service territories implicated municipal boundaries. The statute [§1B(a)] clearly envisions circumstances where cleanly following municipal boundaries may not be possible without giving rise to anomalies Hence, it follows that the Department has discretion to depart from municipal boundaries in resolving service territory disputes, *if* facts and fairness so warrant.” Id. at 7 (emphasis in original).

Olin College and WMLP have clearly demonstrated that not only do “facts and fairness” warrant a determination that Lot 2 is part of WMLP’s service territory but also such a determination is

absolutely consistent with the other provisions of §1B(a), namely that WMLP actually was serving this property when the Legislature established its bright line test of July 1, 1997. WMLP Br. at 6; Olin Br. at 9. Indeed, there are no facts that would support a contrary decision. Boston Edison has never served any portion of Lot 2 and offered no evidence that it has made any investment in distribution facilities in anticipation of serving Lot 2. Hence, there is nothing “unfair” from Boston Edison’s perspective in finding for WMLP. While allowing Boston Edison to claim Lot 2 as part of its service territory would be fundamentally unfair to WMLP (and its customers) that historically has served this property and would be contrary to the clear intent and unambiguous language of §1B(a).

In summary, the facts are clear. Prior to July 1, 1997, WMLP provided electric service to a single parcel of property owned by Babson College. In fact, WMLP had been providing electric service to the portion of that property now known as Lot 2 for over 30 years. On July 1, 1997, the date established by the Legislature in G.L. c. 164, §1B(a) for use in determining service territories, WMLP provided electric service to that single parcel of property and in particular the portion of the property known as Lot 2. Lot 2 is the property which is before the Department in this proceeding and is the property for which Olin College has requested electric service from WMLP. Therefore, the service territory in question has historically been served by WMLP and WMLP served this service territory on July 1, 1997. There is no fact or fairness argument that warrants a taking of this service territory from WMLP and giving it to Boston Edison. Based on the facts before the Department in this proceeding and the plain meaning and intent of G.L. c. 164, §1B(a), WMLP submits that the Department is compelled to determine that Lot 2 is within the exclusive service territory of WMLP.

3. Olin College has the Right to Choose Its Electric Supplier.

If the Department concludes that it may not confine its analysis to Lot 2, WMLP submits that Olin College has the right to choose WMLP as its service provider.¹¹

As discussed at length in WMLP's Initial Brief, at 21-29, Olin College is entitled to select its electric service provider based on the well-established principles that have developed in connection with the Department's order in Ecological Fibers, Inc., D.P.U. 85-71 (1985). There is no reason to repeat the reasons that WMLP set forth in its Initial Brief.

There is, however, an additional point that needs to be discussed if the Department focuses on the entire parcel transferred to Olin College by Babson College, rather than concentrating on the property for which Olin College requested electric service and which is the property that is the subject of Olin College's Petition to the Department.. As discussed on the record, the larger parcel, when it belonged to Babson College, received electric service from both Boston Edison and from WMLP. Boston Edison served several buildings along public ways that abutted the property in Needham. It also served the Babson College baseball field through one of the accounts at 1763 Great Plain Avenue. Tr. 59-60. The Boston Edison service was confined to the southern portion of the property. WMLP, on the other hand, served the portion of property now known as Lot 2 through its service to Babson College. This service was confined to the northern portion of the property.

Both Boston Edison and WMLP can make equally compelling claims that their service territories included the services provided to the larger parcel of property. However, under this scenario,

neither can claim an exclusive right to serve the parcel as each already are serving the parcel. In addition under this scenario, neither can claim a superior right to serve the new construction on the property to the extent that this new construction occurs on property not already served by either of the utilities,¹² especially in this instance when the distribution facilities to interconnect Olin College and Babson College to WMLP do not have to cross any public way in Needham, and therefore, do not require any street crossing permits from Needham.

This set of circumstances is not unlike the circumstances faced by Boston Edison and Massachusetts Electric Company (“MECO”) in the Town of Bellingham. Exh. WMLP-1-2. As Boston Edison has stated, given the way that Bellingham has developed over the years both Boston Edison and MECO can claim a historic legal right to serve portions of the town. Id. MECO generally served the southern portion of the community, while Boston Edison served the northern part. As the two ends of the town grew towards each other, both utilities made claims on properties that were between the two historic service territories and that did not have electric service. As the service territories converged, some parcels were so situated that they had a choice of supplier.

Again, this is similar to what is occurring here. The larger parcel owned by Olin College is served by competing utilities. Absent a clear demarcation of either utility’s service territory, the new buildings are being constructed by Olin College on neutral ground and since neither utility may support a claim of exclusivity, the customer has a right to choose. Under the Department’s recent decision in Peabody, supra at 9, in such a situation it becomes a question of customer choice. In this case, Olin

¹¹ WMLP strongly disagrees with Boston Edison that the Department need consider any property other than Lot 2.

¹² As noted throughout, WMLP has historically served and serves the property (Lot 2) on which Olin College is constructing its new campus. Olin College’s buildings are being constructed on the exact location of WMLP’s historic service to Lot 2.

College unquestionably has chosen WMLP as its service provider on the basis of economics, reliability and customer service. See Olin Br. at 2, 3, 15-28; WMLP Br. at 21-28.¹³

4. Miscellaneous

Boston Edison has made several allegations and assertions in its Initial Brief that warrant brief replies. WMLP comments on each are set out below.

a. Creative Conveyancing

Boston Edison tries to create an issue of “creative conveyancing” where none exists. All parties agree that the 1000 square foot parcel of property purchased by Olin College from Babson College prior to the commencement of this proceeding is not now relevant to the provision of electric service to Lot 2. BE Br. at 35; WMLP Br. at 19; OC Br. at 41. In light of this and the fact that Lot 2 always has been in WMLP’s service territory, the issue of “creative conveyancing” raised in Peabody simply does not apply. WMLP Br. at 16-21. Apparently not satisfied that Olin College has abandoned any plans to take electric service through the 1000 square foot parcel, Boston Edison goes on to fabricate a remarkable “creative conveyancing” argument based on potential future buildings jointly owned by Babson College and Olin College on each other’s property, BE Br. p.35, and the Collaborative Agreement between Babson College and Olin College. Id. at 36. Boston Edison even admitted in this case that Babson College and Olin College did not enter into their joint Collaborative Agreement for the purpose of evading the provisions of G.L. c. 164, §1B or to avoid taking electric service from Boston Edison. Tr. 801-804. Both of Boston Edison’s arguments are without merit and have no bearing on the alleged

¹³ The Department always has provided a clear mandate to electric utilities relative to the importance of the customer. In Peabody, the Department reinforced the need to place the customer’s interest first. What the Department noted

there is equally applicable here: “We believe that a fair resolution may be had here by focusing on the customer, rather than the combatant utilities.” Id. at 8.

“creative conveyance” which simply has not occurred. WMLP Br. at 19-21.

b. Cross Examination of Jessa

Boston Edison is apparently “astonished” that WMLP and Olin College chose not to cross-examine Mr. Jessa. BE Br. at 21, fn. 7. While WMLP cannot address why Olin College elected not to cross-examine Mr. Jessa, WMLP is able to say why it chose not to do so. Mr. Jessa’s testimony was relatively clear and straightforward. It also made evident the fact that the options proposed by Boston Edison were significantly less reliable and substantially more costly than the option proposed by WMLP. See WMLP Br. at 23-29. If Boston Edison had other alternatives that demonstrated more competitive costs with acceptable levels of reliability, Boston Edison should have provided them to the parties and the Department.¹⁴ It did not. Clearly, WMLP is the much lower cost and much more reliable supplier to Olin College than is Boston Edison. These uncontroverted facts are obvious on the record. In fact, based on the record in this case, it is both logical and prudent for Olin College to choose WMLP and not Boston Edison as its electric supplier.

c. Temporary Service

Boston Edison argues that WMLP’s provision of temporary service to Olin College is illegal. BE Br. at 40. It also, not so subtly, threatens to turn Babson College into the Department for providing distribution services to Olin College. Id. at 41, fn. 13. First the issue of temporary service is not before the Department in this proceeding. Second, the temporary service is being

¹⁴ It was not for WMLP to make Boston Edison’s case for it. Boston Edison offered no new alternatives to serve Olin but for the five options set forth in Mr. Jessa’s testimony. These five options and their costs are the only evidence in the record regarding Boston Edison’s costs to connect Olin College. The record shows that Olin College will save between \$1.14 to \$1.74 million by being connected to WMLP rather than to Boston Edison. In addition, the record shows that Olin College will save about \$1.1 million per year in rate charges by being served by WMLP rather than by Boston Edison.

used to supply electricity to Lot 2, which as noted above WMLP has served for over 30 years, which WMLP was serving on July 1, 1997, and which Boston Edison has never served. Lot 2 is in WMLP's service territory. As such, not only is WMLP authorized to provide temporary service but it is obligated to provide such service. Under the Department's decision in Wellesley Board of Public Works, supra WMLP has the franchise obligation to provide electric service in a reliable, cost effective and non-discriminatory manner to Olin College for its buildings and facilities on Lot 2, given that WMLP is the historic service provider to Lot 2. As for threatening Babson College, Boston Edison needs to remember that for the reasons just noted, this property is in WMLP's service territory. The fact is that this issue simply is not Boston Edison's problem.¹⁵ More importantly, however, WMLP submits that this threat against Babson College merely demonstrates Boston Edison's often criticized approach to customer service and community relations.

¹⁵ First, Babson College is WMLP's customer. WMLP is of the opinion that Babson College is acting within WMLP's applicable tariff for Babson College. Exhs. BE-2-19; BE-2-33. Second, Boston Edison moved to have Babson College joined as a party in this case. The Department obviously did not rule in Boston Edison's favor on this motion.

CONCLUSION

For the foregoing reasons, WMLP respectfully requests that pursuant to the provisions of G.L. c. 164, §1B(a), the Department determine that Lot 2 is within WMLP's exclusive service territory, or in the alternative, that the Department determine that Olin College has the right to choose WMLP as its electric service provider.

Respectfully submitted,

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